

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

KEVIN M. DAVIS :

Petitioner :
v : Civil Action No. RDB-05-2058

STATE OF MARYLAND and :
THE ATTORNEY GENERAL OF :
THE STATE OF MARYLAND :
:

Respondents :
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MEMORANDUM OPINION

The above-captioned Petition for Writ of Habeas Corpus was filed on July 27, 2005, pursuant to 28 U.S.C. § 2254. Petitioner has also filed a Motion to Proceed In Forma Pauperis which shall be granted.

Petitioner alleges that: his Eighth Amendment rights have been violated due to infliction of inhumane punishment; he has been denied the right to a speedy trial; and his due process rights have been violated. Paper No. 1 at p. 6. In addition, he states that he has not yet been convicted of the charges pending against him in the Baltimore City District Court. *Id.* at p. 5. As presented, the petition must be dismissed without prejudice.

When filing a federal habeas corpus application under 28 U.S.C. § 2254, a petitioner must show that all of his claims have been presented to the state courts. 28 U.S.C. §2254(b) and (c); *see also Preiser v. Rodriguez*, 411 U.S. 475, 491 (1973). This exhaustion requirement is satisfied by seeking review of the claim in the highest state court with jurisdiction to consider it. For a person convicted of a criminal offense in Maryland, this may be accomplished either on direct appeal or in post-conviction

proceedings. Before he may avail himself of appellate remedies available in the Maryland courts, however, Petitioner must first be tried. The instant petition has been filed prematurely and must, therefore, be dismissed without prejudice.

A separate Order follows.

/s/

August 3, 2005

RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE